

Representative Karianne Lisonbee proposes the following substitute bill:

RESTITUTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Keith Grover

LONG TITLE

General Description:

This bill amends provisions related to restitution.

Highlighted Provisions:

This bill:

- ▶ amends provisions regarding the payment of restitution as a condition of probation;
- ▶ clarifies the sentencing court's jurisdiction over a defendant's case in regards to the remittance of a criminal accounts receivable;
- ▶ amends provisions related to the payment of a criminal accounts receivable by electronic payment;
- ▶ defines terms related to criminal restitution;
- ▶ clarifies and addresses the preclusive effect of a conviction in a subsequent civil action; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **77-18-105**, as enacted by Laws of Utah 2021, Chapter 260 and last amended by
28 Coordination Clause, Laws of Utah 2021, Chapter 246

29 **77-18-114**, as enacted by Laws of Utah 2021, Chapter 260

30 **77-18-118**, as enacted by Laws of Utah 2021, Chapter 260

31 **77-32b-103**, as enacted by Laws of Utah 2021, Chapter 260

32 **77-38b-102**, as last amended by Laws of Utah 2021, Chapter 262

33 **77-38b-303**, as enacted by Laws of Utah 2021, Chapter 260



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **77-18-105** is amended to read:

37 **77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation --**

38 **Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench**
39 **supervision for payments on criminal accounts receivable.**

40 (1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in
41 abeyance agreement, the court may hold the plea in abeyance:

42 (a) in accordance with Chapter 2a, Pleas in Abeyance; and

43 (b) under the terms of the plea in abeyance agreement.

44 (2) If a defendant is convicted, the court:

45 (a) shall impose a sentence in accordance with Section **76-3-201**; and

46 (b) may suspend the execution of the sentence and place the defendant:

47 (i) on probation under the supervision of the department, except as provided in

48 Subsection (5);

49 (ii) on probation under the supervision of an agency of a local government or a private
50 organization; or

51 (iii) on court probation under the jurisdiction of the sentencing court.

52 (3) (a) The legal custody of all probationers under the supervision of the department is
53 with the department.

54 (b) The legal custody of all probationers under the jurisdiction of the sentencing court
55 is vested as ordered by the court.

56 (c) The court has continuing jurisdiction over all probationers.

57 (4) (a) Court probation may include an administrative level of services, including
58 notification to the sentencing court of scheduled periodic reviews of the probationer's
59 compliance with conditions.

60 (b) Supervised probation services provided by the department, an agency of a local
61 government, or a private organization shall specifically address the defendant's risk of
62 reoffending as identified by a screening or an assessment.

63 (5) A court may not order the department to supervise the probation of an individual
64 who is convicted of a class B or C misdemeanor or an infraction.

65 (6) (a) If a defendant is placed on probation, the court may order the defendant as a
66 condition of the defendant's probation:

67 (i) to provide for the support of persons for whose support the defendant is legally
68 liable;

69 (ii) to participate in available treatment programs, including any treatment program in
70 which the defendant is currently participating if the program is acceptable to the court;

71 (iii) be voluntarily admitted to the custody of the Division of Substance Abuse and
72 Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;

73 (iv) if the defendant is on probation for a felony offense, to serve a period of time as an
74 initial condition of probation that does not exceed one year in a county jail designated by the
75 department, after considering any recommendation by the court as to which jail the court finds
76 most appropriate;

77 (v) to serve a term of home confinement in accordance with Section 77-18-107;

78 (vi) to participate in compensatory service programs, including the compensatory
79 service program described in Section 76-6-107.1;

80 (vii) to pay for the costs of investigation, probation, or treatment services;

81 [~~(viii) to pay a criminal accounts receivable established for the defendant under Section~~
82 ~~77-32b-103; or]~~

83 (viii) to pay restitution to a victim with interest in accordance with Chapter 38b, Crime
84 Victims Restitution Act; or

85 (ix) to comply with other terms and conditions the court considers appropriate to
86 ensure public safety or increase a defendant's likelihood of success on probation.

87 (b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a

88 defendant to include a period of time that is served in a county jail immediately before the
89 termination of probation as long as that period of time does not exceed one year.

90 (ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation
91 violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply
92 to the period of time that the court orders the defendant to serve in a county jail under this
93 Subsection (6)(b)(ii).

94 (7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on
95 probation after December 31, 2018:

96 (i) may not exceed the individual's maximum sentence;

97 (ii) shall be for a period of time that is in accordance with the supervision length
98 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the
99 extent the guidelines are consistent with the requirements of the law; and

100 (iii) shall be terminated in accordance with the supervision length guidelines
101 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the
102 guidelines are consistent with the requirements of the law.

103 (b) Probation of an individual placed on probation after December 31, 2018, whose
104 maximum sentence is one year or less, may not exceed 36 months.

105 (c) Probation of an individual placed on probation on or after October 1, 2015, but
106 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
107 completion without violation of 36 months probation in felony or class A misdemeanor cases,
108 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance
109 with Section 64-13-21 regarding earned credits.

110 (d) This Subsection (7) does not apply to the probation of an individual convicted of an
111 offense for criminal nonsupport under Section 76-7-201.

112 (8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal
113 accounts receivable for the defendant upon termination of the probation period for the
114 defendant under Subsection (7), the court may require the defendant to continue to make
115 payments towards the criminal accounts receivable in accordance with the payment schedule
116 established by the court under Section 77-32b-103.

117 (b) A court may not require the defendant to make payments as described in Subsection
118 (8)(a) beyond the expiration of the defendant's sentence.

119 (c) If the court requires a defendant to continue to pay in accordance with the payment
120 schedule for the criminal accounts receivable under this Subsection (8) and the defendant
121 defaults on the criminal accounts receivable, the court shall proceed with an order for a civil
122 judgment of restitution and a civil accounts receivable for the defendant as described in Section
123 [77-18-114](#).

124 (d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's
125 own motion, the court may require a defendant to show cause as to why the defendant's failure
126 to pay in accordance with the payment schedule should not be treated as contempt of court.

127 (ii) A court may hold a defendant in contempt for failure to make payments for a
128 criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

129 (e) This Subsection (8) does not apply to the probation of an individual convicted of an
130 offense for criminal nonsupport under Section [76-7-201](#).

131 (9) When making any decision regarding probation, the court shall consider
132 information provided by the Department of Corrections regarding a defendant's individual case
133 action plan, including any progress the defendant has made in satisfying the case action plan's
134 completion requirements.

135 Section 2. Section [77-18-114](#) is amended to read:

136 **[77-18-114. Unpaid balance at termination of sentence -- Past due account --](#)**
137 **[Notice -- Account or judgment paid in full -- Effect of civil accounts receivable and civil](#)**
138 **[judgment of restitution.](#)**

139 (1) When a defendant's sentence is terminated by law or by the decision of the court or
140 the board:

141 (a) the board shall provide an accounting of the unpaid balance of the defendant's
142 criminal accounts receivable to the court if the defendant was on parole or incarcerated at the
143 time of termination; and

144 (b) except as provided in Subsection [77-18-118\(1\)\(g\)](#), within 90 days after the day on
145 which a defendant's sentence is terminated, the court shall:

146 (i) enter an order for a civil accounts receivable and a civil judgment of restitution for a
147 defendant on the civil judgment docket;

148 (ii) transfer the responsibility of collecting the civil accounts receivable and the civil
149 judgment of restitution to the Office of State Debt Collection; and

150 (iii) identify in the order under this Subsection (1):
151 (A) the Office of State Debt Collection as a judgment creditor for the civil accounts
152 receivable and the civil judgment of restitution; and
153 (B) the victim as a judgment creditor for the civil judgment of restitution.
154 (2) If a criminal accounts receivable for the defendant is more than 90 days past due
155 and the court has ordered that a defendant does not owe restitution to any victim, or the time
156 period in Subsection 77-38b-205(5) has passed and the court has not ordered restitution, the
157 court may:
158 (a) enter an order for a civil accounts receivable for the defendant on the civil judgment
159 docket;
160 (b) identify, in the order under Subsection (2)(a), the Office of State Debt Collection as
161 a judgment creditor for the civil accounts receivable; and
162 (c) transfer the responsibility of collecting the civil accounts receivable to the Office of
163 State Debt Collection.
164 (3) An order for a criminal accounts receivable is no longer in effect after the court
165 enters an order for a civil accounts receivable or a civil judgment of restitution under
166 Subsection (1) or (2).
167 (4) The court shall provide notice to the Office of State Debt Collection and the
168 prosecuting attorney of any hearing that affects an order for the civil accounts receivable or the
169 civil judgment of restitution.
170 (5) The Office of State Debt Collection shall:
171 (a) notify the court when a civil judgment of restitution or a civil accounts receivable is
172 satisfied; and
173 (b) provide the court with an accounting of any distribution made by the Office of State
174 Debt Collection for the civil accounts receivable and the civil judgment of restitution.
175 (6) When a fine, forfeiture, surcharge, cost, or fee is recorded in an order for a civil
176 accounts receivable on the civil judgment docket, or when restitution is recorded as an order
177 for a civil judgment of restitution on the civil judgment docket, the order:
178 (a) constitutes a lien on the defendant's real property until the judgment is satisfied; and
179 (b) may be collected by any means authorized by law for the collection of a civil
180 judgment.

181 (7) A criminal accounts receivable, a civil accounts receivable, and a civil judgment of
182 restitution are not subject to the civil statutes of limitation and expire only upon payment in
183 full.

184 (8) (a) If a defendant asserts that a payment was made to a victim or third party for a
185 civil judgment of restitution, or enters into any other transaction that does not involve the
186 Office of State Debt Collection, and the defendant asserts that the payment results in a credit
187 towards the civil judgment of restitution for the defendant:

188 (i) the defendant shall provide notice to the Office of State Debt Collection and the
189 prosecuting attorney within 30 days after the day on which the payment or other transaction is
190 made; and

191 (ii) the payment may only be credited towards the principal of the civil judgment of
192 restitution and does not affect any other amount owed to the Office of State Debt Collection
193 under Section 63A-3-502.

194 (b) Nothing in this Subsection (8) shall be construed to prevent a victim or a third party
195 from providing notice of a payment towards a civil judgment of restitution to the Office of
196 State Debt Collection.

197 Section 3. Section 77-18-118 is amended to read:

198 **77-18-118. Continuing jurisdiction of a sentencing court.**

199 (1) A sentencing court shall retain jurisdiction over a defendant's criminal case:

200 (a) if the defendant is on probation as described in Subsection 77-18-105(3)(c);

201 (b) if the defendant is on probation and the probation period has terminated under
202 Subsection 77-18-105(7), to require the defendant to continue to make payments towards a
203 criminal accounts receivable until the defendant's sentence expires;

204 (c) within the time periods described in Subsection 77-38b-205(5), to enter or modify
205 an order for a criminal accounts receivable in accordance with Section 77-32b-103;

206 (d) within the time periods described in Subsection 77-38b-205(5), to enter or modify
207 an order for restitution in accordance with Section 77-38b-205;

208 (e) until a defendant's sentence is terminated, to correct an error for a criminal accounts
209 receivable in accordance with Subsection 77-32b-105(1)(a);

210 (f) until a defendant's sentence is terminated, to modify a payment schedule for a
211 criminal accounts receivable in accordance with Subsection 77-32b-105(1)(b);

212 ~~[(g) if a defendant files a petition for remittance under Subsection 77-32b-105(1)(c)~~
213 ~~before the defendant's sentence is terminated, for 90 days from the day on which the petition is~~
214 ~~filed to determine whether to remit, in whole or in part, the defendant's criminal accounts~~
215 ~~receivable;]~~

216 [(h)] (g) if a defendant files a petition for remittance under Subsection 77-32b-106(1)
217 within 90 days from the day on which the defendant's sentence is terminated, to determine
218 whether to remit, in whole or in part, the defendant's criminal accounts receivable; and

219 [(i)] (h) to enter an order for a civil accounts receivable and a civil judgment of
220 restitution in accordance with Section 77-18-114.

221 (2) This section does not prevent a court from exercising jurisdiction over:

222 (a) a contempt proceeding for a defendant under Title 78B, Chapter 6, Part 3,
223 Contempt; or

224 (b) enforcement of a civil accounts receivable or a civil judgment of restitution.
225 Section 4. Section 77-32b-103 is amended to read:

226 **77-32b-103. Establishment of a criminal accounts receivable -- Responsibility --**
227 **Payment schedule -- Delinquency or default.**

228 (1) (a) Except as provided in Subsection (1)(b) and (c), at the time of sentencing or
229 acceptance of a plea in abeyance, the court shall enter an order to establish a criminal accounts
230 receivable for the defendant.

231 (b) The court is not required to create a criminal accounts receivable for the defendant
232 under Subsection (1) if the court finds that the defendant does not owe restitution and there are
233 no other fines or fees to be assessed against the defendant.

234 (c) Subject to Subsection 77-38b-205(5), if the court does not create a criminal
235 accounts receivable for a defendant under Subsection (1), the court shall enter an order to
236 establish a criminal accounts receivable for the defendant at the time the court enters an order
237 for restitution under Section 77-38b-205.

238 (2) After establishing a criminal accounts receivable for a defendant, the court shall:

239 (a) if a prison sentence is imposed and not suspended for the defendant:

240 (i) accept any payment for the criminal accounts receivable that is tendered on the date
241 of sentencing; and

242 (ii) transfer the responsibility of receiving, distributing, and processing payments for

243 the criminal accounts receivable to the Office of State Debt Collection; and

244 (b) for all other cases:

245 (i) retain the responsibility for receiving, processing, and distributing payments for the
246 criminal accounts receivable until the court enters a civil accounts receivable or civil judgment
247 of restitution on the civil judgment docket under Subsection 77-18-114(1) or (2); and

248 (ii) record each payment by the defendant on the case docket.

249 (c) For a criminal accounts receivable that a court retains responsibility for receiving,
250 processing, and distributing payments under Subsection (2)(b)(i), the Judicial Council may
251 establish rules to require a defendant to pay the cost, or a portion of the cost, for an electronic
252 payment ~~→~~ fee ~~←~~ that is charged by a financial institution for the use of a credit or debit card [~~by~~
252a ~~the~~
253 ~~defendant~~] to make payments towards the criminal accounts receivable.

254 (3) (a) Upon entering an order for a criminal accounts receivable, the court shall
255 establish a payment schedule for the defendant to make payments towards the criminal
256 accounts receivable.

257 (b) In establishing the payment schedule for the defendant, the court shall consider:

258 (i) the needs of the victim if the criminal accounts receivable includes an order for
259 restitution under Section 77-38b-205;

260 (ii) the financial resources of the defendant, as disclosed in the financial declaration
261 under Section 77-38b-204;

262 (iii) the burden that the payment schedule will impose on the defendant regarding the
263 other reasonable obligations of the defendant;

264 (iv) the ability of the defendant to pay restitution on an installment basis or on other
265 conditions fixed by the court;

266 (v) the rehabilitative effect on the defendant of the payment of restitution and method
267 of payment; and

268 (vi) any other circumstance that the court determines is relevant.

269 (4) A payment schedule for a criminal accounts receivable does not limit the ability of
270 a judgment creditor to pursue collection by any means allowable by law.

271 (5) If the court orders restitution under Section 77-38b-205, or makes another financial
272 decision, after sentencing that increases the total amount owed in a defendant's case, the
273 defendant's criminal accounts receivable balance shall be adjusted to include any new amount

274 ordered by the court.

275 (6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as
276 defined in Section 64-13-1, or the defendant is involuntarily committed under Section
277 62A-15-631:

278 (i) all payments for a payment schedule shall be suspended for the period of time that
279 the defendant is incarcerated or involuntarily committed, unless the court, or the board if the
280 defendant is under the jurisdiction of the board, expressly orders the defendant to make
281 payments according to the payment schedule; and

282 (ii) the defendant shall provide the court with notice of the incarceration or involuntary
283 commitment.

284 (b) A suspension under Subsection (6)(a) shall remain in place for 60 days after the day
285 in which the defendant is released from incarceration or commitment.

286 Section 5. Section 77-38b-102 is amended to read:

287 **77-38b-102. Definitions.**

288 As used in this chapter:

289 (1) "Civil accounts receivable" means the same as that term is defined in Section
290 77-32b-102.

291 (2) "Civil judgment of restitution" means the same as that term is defined in Section
292 77-32b-102.

293 [~~(1)~~] (3) (a) "Conviction" means:

294 (i) a plea of:

295 (A) guilty;

296 (B) guilty with a mental illness; or

297 (C) no contest; or

298 (ii) a judgment of:

299 (A) guilty; or

300 (B) guilty with a mental illness.

301 (b) "Conviction" does not include:

302 (i) a plea in abeyance until a conviction is entered for the plea in abeyance;

303 (ii) a diversion agreement; or

304 (iii) an adjudication of a minor for an offense under Section 80-6-701.

305 (4) "Criminal accounts receivable" means the same as that term is defined in Section
306 [77-32b-102](#).

307 ~~[(2)]~~ (5) "Criminal conduct" means:

308 (a) any misdemeanor or felony offense of which the defendant is convicted; or

309 (b) any other criminal behavior for which the defendant admits responsibility to the
310 sentencing court with or without an admission of committing the criminal behavior.

311 ~~[(3)]~~ (6) (a) "Defendant" means an individual who has been convicted of, or entered
312 into a plea disposition for, criminal conduct.

313 (b) "Defendant" does not include a minor, as defined in Section [80-1-102](#), who is
314 adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 80, Chapter 6,
315 Juvenile Justice.

316 ~~[(4)]~~ (7) "Department" means the Department of Corrections.

317 ~~[(5)]~~ (8) "Diversion agreement" means an agreement entered into by the prosecuting
318 attorney and the defendant that suspends criminal proceedings before conviction on the
319 condition that a defendant agree to participate in a rehabilitation program, pay restitution to the
320 victim, or fulfill some other condition.

321 ~~[(6)]~~ (9) "Office" means the Office of State Debt Collection created in Section
322 [63A-3-502](#).

323 ~~[(7)]~~ (10) "Party" means the prosecuting attorney, the defendant, or the department
324 involved in a prosecution.

325 ~~[(8)]~~ (11) "Payment schedule" means the same as that term is defined in Section
326 [77-32b-102](#).

327 ~~[(9)]~~ (12) (a) "Pecuniary damages" means all demonstrable economic injury, losses,
328 and expenses regardless of whether the economic injury, losses, and expenses have yet been
329 incurred.

330 (b) "Pecuniary damages" does not include punitive damages or pain and suffering
331 damages.

332 ~~[(10)]~~ (13) "Plea agreement" means an agreement entered between the prosecuting
333 attorney and the defendant setting forth the special terms and conditions and criminal charges
334 upon which the defendant will enter a plea of guilty or no contest.

335 ~~[(11)]~~ (14) "Plea disposition" means an agreement entered into between the

336 prosecuting attorney and the defendant including a diversion agreement, a plea agreement, a
337 plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any
338 other jurisdiction or where charges are dismissed without a plea.

339 ~~[(12)]~~ (15) "Plea in abeyance" means an order by a court, upon motion of the
340 prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the
341 defendant but not, at that time, entering judgment of conviction against the defendant nor
342 imposing sentence upon the defendant on condition that the defendant comply with specific
343 conditions as set forth in a plea in abeyance agreement.

344 ~~[(13)]~~ (16) "Plea in abeyance agreement" means an agreement entered into between the
345 prosecuting attorney and the defendant setting forth the specific terms and conditions upon
346 which, following acceptance of the agreement by the court, a plea may be held in abeyance.

347 ~~[(14)]~~ (17) "Restitution" means the payment of pecuniary damages to a victim.

348 ~~[(15)]~~ (18) (a) "Victim" means any person who has suffered pecuniary damages that are
349 proximately caused by the criminal conduct of the defendant.

350 (b) "Victim" includes:

351 (i) the Utah Office for Victims of Crime if the Utah Office for Victims of Crime makes
352 a payment to a victim under Section [63M-7-519](#);

353 (ii) the estate of a deceased victim; and

354 (iii) a parent, spouse, or sibling of a victim.

355 (c) "Victim" does not include a codefendant or accomplice.

356 Section 6. Section **77-38b-303** is amended to read:

357 **77-38b-303. Civil action by a victim.**

358 (1) ~~[(a)]~~ A provision under this part concerning restitution does not limit or impair the
359 right of a person injured by a defendant's criminal conduct to sue and recover damages from the
360 defendant in a civil action.

361 ~~[(b)]~~ (2) (a) A court's finding on the amount of restitution owed by a defendant under
362 Subsection [77-38b-205](#)(1)(a)(iii) may be used in a civil action ~~[for a]~~ pertaining to the
363 defendant's liability to a victim as presumptive proof of the victim's pecuniary damages that are
364 proximately caused by the defendant's criminal conduct.

365 ~~[(c)]~~ (b) If a conviction in a criminal trial decides the issue of a defendant's liability for
366 pecuniary damages suffered by a victim, the issue of the defendant's liability for pecuniary

367 damages is conclusively determined as to the defendant if the issue is involved in a subsequent
 368 civil action.

369 ~~Ŝ→ [(c) If a defendant is convicted of a misdemeanor or felony offense and the conviction is~~
 370 ~~not a plea of no contest.] (c) (i) Except as provided in Subsection (2)(c)(ii), if a defendant is~~
 370a ~~convicted of a misdemeanor or felony offense, ←Ŝ~~ the defendant is precluded from subsequently
 370b denying the essential
 371 allegations of the offense in a subsequent civil action brought against the defendant for the
 372 criminal conduct underlying the offense. Ŝ→ (ii) Subsection (2)(c)(i) does not apply if the offense
 372a is a class C misdemeanor under Title 41, Chapter 6a, Traffic Code, or the defendant entered a
 372b plea of no contest for the offense. ←Ŝ

373 [~~(2)~~] (3) (a) The sentencing court shall credit any payment in favor of the victim in a
 374 civil action for the defendant's criminal conduct toward the amount of restitution owed by the
 375 defendant to the victim.

376 (b) In a civil action, a court shall credit any restitution paid by the defendant to a victim
 377 for the defendant's criminal conduct towards the victim against any judgment that is in favor of
 378 the victim for the civil action.

379 (c) If a victim receives payment from the defendant for the civil action, the victim shall
 380 provide notice to the sentencing court and the court in the civil action of the payment within 30
 381 days after the day on which the victim receives the payment.

382 (d) Nothing in this section shall prevent a defendant from providing proof of payment
 383 to the court or the office.

384 [~~(3)~~] (4) (a) If a victim prevails in a civil action against a defendant, the court shall
 385 award reasonable attorney fees and costs to the victim.

386 (b) If the defendant prevails in the civil action, the court shall award reasonable costs to
 387 the defendant if the court finds that the victim brought the civil action for an improper purpose,
 388 including to harass the defendant or to cause unnecessary delay or needless increase in the cost
 389 of litigation.